between section 202 of the Customs Consolidation Act, 1876, and Enactment No. 27 (Customs); in the former forfeiture is mandatory, in the latter it is permissive and I agree that the Magistrate in exercising such power must use judicial discretion. This, as Mr. Hogan emphasised, cannot be done unless the owners are permitted to be heard. I have already held to this effect in *Lim Geok Ching and anor. v. Public Prosecutor*[5] and although that was a case under the Opium and Chandu Proclamation, 1946, I think the same principles apply. It would be different if forfeiture was automatic, but section 94 (3) of Enactment No. 27 (Customs) does not so insist, it uses the words "shall be liable to seizure". I have not omitted to regard the powers contained in section 78 of Enactment No. 27 (Customs) reserved to the High Commissioner, but this is an overriding power covering all forms of seizure; I do not agree with Mr. Boyle that this constitutes the only avenue by which an owner may seek relief. I therefore consider the owners should be given opportunity to show cause why the vehicle (Exhibt P–2) and the articles (Exhibit P–4 and 5) should not be forfeited.

This concludes the grounds. The conviction and sentence of the Court below is upheld, but the order for forfeiture is set aside. The seizure remains but the claimants-owners of the vehicle (Exhibit P–2) and the articles (Exhibits P–4 and 5) are to be required to appear before the Magistrate to show cause why forfeiture should not be ordered.

Order accordingly.

S. K. MOHAMOODHU & CO.
v.
G. A. KHUMREE & CO.

[Court of Appeal (Pretheroe, Ag. C.J., Russell and Briggs, JJ.) August 30, 1950]

[F. M. — Civil Appeal No. 21 of 1950]

Debtor and Creditor (Occupation Period) Ordinance, 1948 — Judgment obtained in Japanese Court on pre-occupation debt — Merger of debt — Judgment debt paid in full during occupation — Whether payment discharges the debt — Japanese Judgments and Civil Proceedings Ordinance, 1946.

In this case the respondents had sold certain goods to the appellants to the value of $866.55 prior to the Japanese occupation. During the occupation the respondents obtained judgment against the appellants and later during the occupation the amount of the judgment and costs were paid by the appellants to the respondents. In March 1950 the respondents applied to a Judge in Chambers under section 5 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, for an order that a judgment of the High Court be substituted for the Japanese judgment. Jobling, J. held that the amount paid by the appellants must be revalued in accordance with the Debtor and Creditor (Occupation Period) Ordinance, 1948, and that a judgment of the Court for the balance found to be due after revaluation be substituted for the judgment of the Japanese Court. The appellants appealed.

Held, (1) that the pre-occupation debt had merged in the judgment debt and that this judgment debt was an occupation debt for the purposes of the Debtor and Creditor (Occupation Period) Ordinance, 1948; (2) that the debt in this case was therefore fully discharged by the payment made by the appellants.

Cases referred to:—

(1) *European Central Railway Company, ex parte Oriental Financial Corporation* 4 Ch. D. 33.

(2) *Florence v. Jennings* 2 C.B. (N.S.) 454 at p. 466.

APPEAL from an order of Jobling, J. reported in (1950) M.L.J. 206.

Ong Huck Lim for the appellants.

Sir Husein Abdoolcader and *T. E. Conaghan* for the respondents.

Cur. Adv. Vult.

Pretheroe, Ag. C.J.: — The facts of this case can be stated very shortly. Before the Japanese occupation the respondents to this appeal sold and delivered certain goods to the value of $666.55 to the appellants. During the occupation the respondents obtained judgment against the appellants in this amount and costs which were taxed and allowed at $88.70. This judgment was dated the 12th October, 1943, but the respondents took no steps to enforce it, and on the 23rd June, 1945, the appellants paid to respondents the amount of the judgment and costs.

In March, 1950, the respondents applied to a Judge in Chambers under section 5 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, for an order that a judgment of the High Court be substituted for the Japanese judgment mentioned above.

The learned Judge held that the original, or pre-occupation, debt had merged in the judgment debt but further decided that, under sub-section (5) of section 5 of the Ordinance, the amount paid in satisfaction of the debt and costs should be revalued under the Debtor and Creditor (Occupation Period) Ordinance, 1948, and a judgment of the High Court should be substituted for that of the Japanese Court in respect of the balance then found due. From this decision the appellants appealed to this Court.

There is no doubt that the learned Judge was correct in holding that the pre-occupation debt merged in the judgment debt, and the point in issue is whether the amount paid in satisfaction of the judgment and costs should be revalued under the provisions of the Debtor and Creditor (Occupation Period) Ordinance, 1948. Or, to put the question in another way, was the judgment debt an occupation debt or a pre-occupation debt for the purposes of the last mentioned Ordinance?

For the respondents Mr. Conaghan argued that the merger of the debts did not alter the character of the debt: the judgment merely fixed the amount due on a pre-occupation debt. I find myself unable to accept this submission. The position was clearly stated by Bramwell L.J. in the case of the *European Central Railway Co., ex parte Oriental Financial Corporation*[1]. The effect of a judgment is that the original debt disappeared and "a fresh debt is created with different consequences". In this case the fresh debt was created in October, 1943, and consequently was an occupation debt for the purposes of the Debtor and Creditor (Occupation Period) Ordinance, 1948. Section 5 of of that Ordinance provides that any payment made during the occupation period by a debtor or his agent in respect of an occupation debt shall be a valid discharge of such debt to the extent of the face value of such payment. In my opinion, therefore, the debt in this case was fully discharged by the payment made by the appellants in June, 1945.

It follows, therefore, that I would allow this appeal and set aside the order made in the lower Court. The original application should be dismissed and appellants granted their costs in this Court and in the Court below. The $500 deposited in Court should be paid out to appellants' solicitors.

Russell, J. : — In October 1943, during the Japanese occupation the respondents obtained a judgment against the appellants for a sum of $666.55 and costs for goods sold and delivered before the said occupation. They took no steps to enforce this judgment and on the 23rd of June, 1945, the appellants paid the judgment debt in full.

In March, 1950, the respondents made an application to the Judge in Chambers under section 5 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, for an order that a judgment of the High Court be substituted for the judgment of the Japanese Court mentioned above.

The learned Judge accepted the argument of the respondents and held that the original debt had merged in the judgment debt. He however went on to hold that section 5 sub-section (5) directed him to take into account the subsequently enacted provisions of the Debtor and Creditor (Occupation Period) Ordinance, 1948. He held that it was his duty to construe and apply these provisions in order to give relief to persons who had received Japanese currency in place of the more valuable pre-occupation currency. He therefore granted the order applied for and directed that the amount paid by the respondents must be revalued in accordance with the Debtor and Creditor (Occupation Period) Ordinance and that a judgment of the High Court for the balance found to be due be substituted for the judgment of the Japanese Court. The appellants appealed.

I have no doubt that the learned Judge was correct in holding that the original debt had merged in the judgment debt.

Counsel for the appellants argued that the nature of the debt had not altered and that a pre-occupation debt still existed.

There cannot however be two debts and as was stated in the case of *In re European Central Railway Company, ex parte Oriental Financial Corporation*[1], by Lord Justice Bramwell at page 38 once the original debt has gone, "*transit in rem judicatam*", a fresh debt was created with different consequences.

A new occupation debt having thus arisen section 5 of the Debtor and Creditor (Occupation Period) Ordinance states that any payment made during the occupation period by a debtor in respect of an occupation debt is a valid discharge to the extent of the face value of such payment.

It is true that sub-section (5) of section 5 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, states that any judgment, etc. issued under its provisions shall take into account the extent to which a Japanese decree may have already been satisfied, the provisions of any Ordinance dealing with the payment of debts in Japanese currency but it was of course unknown at that time whether the payment of an occupation debt during the occupation period would be a valid discharge to the extent of the face value of the payment but in section 5 of the Debtor and Creditor (Occupation Period) Ordinance it was subsequently so enacted. Here the debt was completely discharged.

It might be argued that the fact that the respondents have received only Japanese currency for more valuable pre-occupation currency in satisfaction of their debt is a hardship on them.

The fact remains however that they elected of their own free will to bring their action in a Japanese Court for their pre-occupation debt and judgment was given in their favour for a sum which they well knew at the time they brought their action might be fully satisfied by a payment in Japanese currency. They were not compelled to bring their action and having once done so they must abide by the consequences.

I would allow this appeal. The order of the learned Judge in the Court below should be set aside and the application dismissed with costs here and in the Court below.

Briggs, J. : — The respondents to this appeal obtained judgment against the appellants in a Japanese court in 1943 on a claim founded on a pre-occupation debt. The appellants, without any demand by the respondents, paid the judgment debt in full in occupation currency in July, 1945. The respondents applied to the Court below to substitute a judgment of the High Court for the Japanese judgment on the footing that the payment must be revalued and that therefore almost the whole of the judgment debt remained outstanding. The learned trial judge accepted this contention and gave judgment for $743.03. The appellants appealed.

The only substantial question in this appeal is whether the debt which the appellants paid was an occupation debt or a pre-occupation debt, within the meaning of the Debtor and Creditor (Occupation Period) Ordinance, 1948. If it was an occupation debt, section 5 applies and the judgment has been fully satisfied. If it was a pre-occupation debt, section 4 applies and revaluation may be necessary.

The original contract between the parties provided for payment in Malayan currency. The respondents of their own volition obtained, in lieu of this contract, a judgment which in effect required the appellants to pay a sum in occupation or Malayan currency, at the option of the person paying, since both were legal tender. The appellants have paid this sum. It would not appear on the face of it equitable to allow the respondents to reverse their previous election and claim again almost the whole of the original sum in Malayan currency.

The learned trial judge held that the original debt merged in the judgment, and there can be no doubt that this is right. The two debts cannot co-exist. They are of a different nature, have different incidents and, as I have stated, could be discharged by payment in different currencies. The pre-occupation debt wholly disappeared when the judgment was given. See *Florence v. Jennings*[2].

The learned trial Judge rightly held that the provision in section 5 (5) of the Japanese Judgments and Civil Proceedings Ordinance, 1946, which directs the Court to take into account "the provisions of any Ordinance dealing with the payment of debts in Japanese or Japanese sponsored currency" obliged him to apply the provisions of the Debtor and Creditor (Occupation Period) Ordinance, 1948. He held also that the intention of that Ordinance was to give relief to persons in the position of the respondents. In this I think he was wrong. The words of the Ordinance are clear and its intention is to give relief in certain cases of payment of pre-occupation debts in occupation currency; but it also provides that payment of an occupation debt in occupation currency is a valid discharge. It is just as much the duty of the Court to give effect to the latter provision as to the former. The definition of "occupation debt" in section 2 is :—

> "'Occupation debt' means a debt payable by virtue of an obligation incurred during the occupation period and accruing due at any time;"

I think these words refer to the immediate, and not to any remoter, foundation of the debt. In this case, the immediate foundation was the judgment, not the earlier obligation on which the judgment was itself founded.

I would allow this appeal and set aside the order of the learned trial judge. The respondents' application should be dismissed and the appellants should have their costs of this appeal and of the proceedings in the Court below. The deposit of $500 should be paid out to the appellants' solicitors.

Appeal allowed.